

**ITEM 1**  
**PROPOSED MINUTES**

COMMISSION ON STATE MANDATES

State Capitol, Room 447  
Sacramento, California  
August 1, 2008

Present: Member Michael C. Genest, Chairperson  
Director of the Department of Finance  
Member Francisco Lujano, Vice Chairperson  
Representative of the State Treasurer  
Member Richard Chivaro (Arrived during Closed Executive Session)  
Representative of the State Controller  
Member Cynthia Bryant  
Director of the Office of Planning and Research  
Member J. Steven Worthley  
County Supervisor  
Member Sarah Olsen  
Public Member  
Member Paul Glaab  
City Council Member

**CALL TO ORDER AND ROLL CALL**

Chairperson Genest called the meeting to order at 9:38 a.m. Member Chivaro was absent.

**APPROVAL OF MINUTES**

Item 1      June 26, 2008

The June 26, 2008 hearing minutes were adopted by a vote of 6-0.

**PROPOSED CONSENT CALENDAR**

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,  
TITLE 2, CHAPTER 2.5, ARTICLE 8 (ACTION)

A.      PARAMETERS AND GUIDELINES

- Item 8    *California Fire Incident Reporting System (CFIRS)* (CSM4419/00-TC-02)  
July 1990 California Fire Incident Reporting System Manual; Health and  
Safety Code Section 13110.5 as amended by Statutes 1987, Chapter 345  
San Ramon Valley Fire Protection District and City of Newport Beach,  
Claimants
  
- Item 9    *In-Home Supportive Services II* (00-TC-23)  
Statutes 2000; Chapter 445, Statutes 1999, Chapter 90; Statutes 1991,  
Chapter 91  
County of San Bernardino, Claimant

Member Olsen made a motion to adopt items 6 and 7 on the consent calendar. With a second by Member Bryant, the motion carried by a vote of 6-0.

**APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)**

Item 2        Staff Report (if necessary)

There were no appeals to consider.

**HEARINGS AND DECISIONS ON CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)**

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing.

**A. TEST CLAIMS**

Item 3        *Pupil Expulsions II*, (96-385-03, 03A, 03B 98-TC-22 and 01-TC-18) Education Code Sections 48900, 48900.2, 48900.3, 48900.4, 48915, 48915.1, 48915.2, 48915.7, 48916, 48916.2, 48917 (& former 48907.5), 48918 Statutes 1975, Chapter 1253 (AB 1770), Statutes 1977, Chapter 965 (AB 530); Statutes 1978, Chapter 668 (AB 2191), Statutes 1979, Chapter 1014 (AB 202), Statutes 1982, Chapter 318 (SB 1385), Statutes 1983, Chapter 498 (SB 813), Statutes 1984, Chapter 23 (AB 1619), Statutes 1984, Chapter 536 (AB 3151), Statutes 1984, Chapter 622 (SB 1685), Statutes 1985, Chapter 318 (AB 343), Statutes 1986, Chapter 1136 (AB 4085), Statutes 1987, Chapter 383 (AB 56), Statutes 1987, Chapter 942 (AB 2590), Statutes 1989, Chapter 1306 (SB 142), Statutes 1990, Chapter 1231 (AB 3794), Statutes 1990, Chapter 1234 (AB 3880), Statutes 1992, Chapter 152 (AB 3362), Statutes 1992, Chapter 909 (SB 1930), Statutes 1993, Chapter 1255 (AB 342), Statutes 1993, Chapter 1256 (SB 1198), Statutes 1993, Chapter 1257 (SB 1130), Statutes 1994, Chapter 146 (AB 3601), Statutes 1994, Chapter 1017 (AB 2752), Statutes 1994, Chapter 1198 (AB 2543), Statutes 1995, Chapter 95 (AB 620), Statutes 1995, Chapter 972 (SB 966), Statutes 1996, Chapter 15 (AB 1489) First Amendment to add Education Code Sections 48916.1 & 48918.5, and to delete 48916.2 & 48915.7, and to add Statutes 1995, Chapter 974 (AB 922), Statutes 1996, Chapter 915 (AB 692), Statutes 1996, Chapter 937 (AB 2834), Statutes 1996, Chapter 1052 (AB 2720) Second Amendment to add Education Code Section 48900.7, and to add Statutes 1997, Chapter 405 (AB 307), and Statutes 1997, Chapter 637 (AB 412) Third Amendment to add Education Code Sections 48918 (as amended), 48919, 48919.5, and to add Statutes 1997, Chapter 417 (AB 259), Statutes 1998, Chapter 489 (SB 1427) Fourth Amendment to add Education Code Sections 48900, 48900.3, 48915, 48916.1, 48918, 48919, 48923, Statutes 1998, Chapter 489 (SB 1427); Statutes 1999, Chapter 332 (AB 588), Statutes 1999, Chapter 646 (AB 1600), Statutes 2000, Chapter 147 (AB 1721), Statutes 2001, Chapter 116 (SB 166), Statutes 2001, Chapter 484 (AB 653);

*Pupil Suspensions II*, (96-358-04A, 04B, 98-TC-23 and 01-TC-17)  
Education Code Sections 48900, 48900.2, 48900.3, 48900.4, 48900.5,  
48911 Statutes 1977, Chapter 965 (AB 530), Statutes 1978, Chapter 668  
(AB 2191), Statutes 1980, Chapter 73 (SB 1247), Statutes 1982, Chapter  
318 (SB 1385), Statutes 1983, Chapter 498 (SB 813), Statutes 1983,  
Chapter 1302 (AB 70), Statutes 1984, Chapter 536 (AB 3151), Statutes  
1985, Chapter 318 (AB 343), Statutes 1985, Chapter 856 (AB 1758),  
Statutes 1985, Chapter 907 (SB 1260), Statutes 1986, Chapter 1136  
(AB 4085), Statutes 1987, Chapter 134 (AB 439), Statutes 1987, Chapter  
383 (AB 56), Statutes 1989, Chapter 1306 (SB 142), Statutes 1990,  
Chapter 1234 (AB 3880), Statutes 1992, Chapter 909 (SB 1930), Statutes  
1992, Chapter 1360 (AB 2773), Statutes 1994, Chapter 146 (AB 3601),  
Statutes 1994, Chapter 1017 (AB 2752), Statutes 1994, Chapter 1198  
(AB 2543), Statutes 1995, Chapter 972 (SB 966)  
First Amendment to add Statutes 1996, Chapter 915 (AB 692) amending  
Education Code Section 48900  
Second Amendment to add Statutes 1997, Chapters 405 (AB 307) and 637  
(AB 412), adding or amending Education Code Sections 48900.7 and  
48900  
Third Amendment to add Statutes 1997, Chapter 637 (AB 412) adding  
Education Code Section 48900.8  
Fourth Amendment to add Statutes 1999, Chapter 646 (AB 1600) and  
Statutes 2001, Chapter 484 (AB 653), amending Education Code Sections  
48900 and 48900.3  
*Educational Services Plan for Expelled Pupils*, (97-TC-09)  
Education Code Sections 48915, 48916, 48916.1, 48926 Statutes 1995,  
Chapter 972 (SB 966), Statutes 1995, Chapter 974 (AB 922), Statutes  
1996, Chapter 937 (AB 2834), Statutes 1996, Chapter 1052 (AB 2720)  
First Amendment filed on December 3, 2001 to substitute Claimant  
San Juan Unified School District, Claimant

Ms. Higashi clarified that this item is the consolidation of nine test claims.

Eric Feller, Senior Commission Counsel presented this item. Mr. Feller explained that these test claims and amendments were filed between 1996 and 2002 on Education Code statutes that involve expelling and suspending pupils for various offenses and related activities. Staff found that based on *San Diego Unified School District* and other cases, that portions of these test claims and amendments are reimbursable state mandates.

Mr. Feller stated that the claimant and the San Diego Unified School District have two issues in dispute. First, that expulsion for possession of an explosive is a federal mandate. Second, issuing subpoenas for expulsion hearings is not a reimbursable state mandate.

Parties were represented as follows: Keith Petersen representing the test claimant, Art Palkowitz for the San Diego Unified School District, Nick Schweizer and Susan Geanacou for the Department of Finance.

Mr. Petersen explained that these nine test claims were filed subsequent to the original four test claims filed in 1994 for *Pupil Expulsions, Suspensions and Appeals*, and resulted in Supreme Court findings. Mr. Petersen stated that, although he had a dispute on two legal issues, staff's findings are consistent with the Supreme Court rulings. Therefore, he stands on the written submissions.

Mr. Palkowitz concurred with Mr. Petersen that the conclusions by staff are consistent with the court ruling. He also requested an opportunity to respond to any objections that Finance has to the staff analysis.

Mr. Schweizer stated that Finance does not have significant objections to the staff analysis. He continued that there are minor issues that may not meet the cost threshold for reimbursement, but Finance is in agreement with the staff analysis.

Member Worthley commented that he struggled with the staff findings on the subpoena language. As an attorney, without issuing a subpoena for a witness to testify, he would be subject to malpractice. He disagrees with the justices who decided the case.

Member Worthley moved to adopt the staff recommendations.

Susan Geanacou clarified that Finance agrees that the staff analysis is correct.

With a second by Member Glaab, the staff recommendation to approve the test claim was adopted by a vote of 6-0.

Item 4 Proposed Statement of Decision: *Pupil Expulsions II*, (96-385-03, 03A, 03B 98-TC-22 and 01-TC-18); *Pupil Suspensions II*, (96-358-04A, 04B, 98-TC-23 and 01-TC-17); *Educational Services Plan for Expelled Pupils*, (97-TC-09)

[See description of statutes and executive orders in Item 3 above.]

Mr. Feller also presented this item. He stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the *Pupil Expulsions II*, *Pupil Suspensions II* and *Educational Services Plan for Expelled Pupils* test claims. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes.

Member Bryant made a motion to adopt the proposed Statement of Decision. With a second by Member Glaab, the Statement of Decision was adopted by a vote of 7-0.

Member Bryant complimented everyone involved acknowledging the massive amount of hard work that went into such a complete record enabling the expedient vote.

Ms. Higashi added that staff will be preparing and issuing the proposed Statement of Decision into final form along with the proposed parameters and guidelines and the proposed amendments to the parameters and guidelines to help expedite the proceedings.

**INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (ACTION)**

**PARAMETERS AND GUIDELINES**

- Item 7      *Pupil Discipline Records, (00-TC-10) and Notification to Teachers: Pupils Subject to Suspension or Expulsions II, (00-TC-11)*  
Education Code Sections 48201 and 49079  
Statutes 2000, Chapter 345 (AB 29)  
Carpinteria Unified School District, Sweetwater Union High School District, and Grant Joint Union High School District, Claimants

Camille Shelton, Chief Legal Counsel, presented this item. Ms. Shelton explained that these proposed parameters and guidelines address two Education Code statutes dealing with pupil discipline records and notification to teachers about students who have been suspended or expelled.

The only issue in dispute is Education Code section 48201 that requires school districts, when receiving a pupil transferring from another district, to request the pupil's records from the transferring school district or law enforcement agency regarding acts committed by the student that resulted in suspension or expulsion from school. The Statement of Decision finds that the activity of requesting the records is reimbursable. The activity of the transferring school district providing those records, however, is not mandated by the statute but would be addressed by the Commission in the parameters and guidelines phase.

Ms. Shelton stated that Finance opposes reimbursement for the activity of the transferring school district to provide the suspension and expulsion records upon request of the receiving school district.

Ms. Shelton reported that staff recommends that the Commission approve reimbursement to provide suspension records upon request. Ms. Shelton noted that the Commission does have the authority under its regulations to approve reimbursement for activities found to constitute the most reasonable method of complying with the mandate which is defined as those methods not specified in statute that are necessary to carry out the mandated program.

Staff also recommends that the Commission deny the claimant's request for reimbursement for providing expulsion records, however, since that activity is required by other statutes in the Education Code. Therefore staff recommends that the Commission adopt the staff analysis and the parameters and guidelines as presented to the Commission.

Parties were represented as follows: Keith Petersen for the test claimants, Donna Ferebee and Nick Schweizer for the Department of Finance.

Mr. Petersen stated that this item was on consent until a few days ago and he agrees with it moving forward on consent.

Mr. Schweizer explained that Finance's reading of the legislation is that it clearly required schools to request the records, but it did not require the school receiving the request to acquire the records. Therefore, Finance does not support reimbursing local agencies for activities that are not clearly required by state law.

Member Worthley responded that there is a need for common sense to fit in and moved adoption of the staff recommendation.

Ms. Ferebee remarked that there are at least two other examples in law where Legislature saw fit to expressly require the provision of the records. She continued that it would not be appropriate to add reimbursement at the parameters and guidelines phase because only the mandated activity of requesting the records should be reimbursable.

Member Olsen remarked that a common sense test should prevail to avoid getting caught in legalese and not thinking about how things work in the real world. Member Olsen then seconded the motion to adopt the staff recommendation.

Chairperson Genest inquired if there was any legislative history that would suggest why the Legislature did not require the district to provide the record. Ms. Ferebee reported that none was found. Ms. Shelton noted that while the test claim statute does not say “you shall provide” the records, it does absolve school districts from criminal liability for providing the records. So, the statute does discuss the activity of providing the records.

Chairperson Genest agreed with Finance’s position. Ms. Shelton clarified that the Commission on parameters and guideline has the authority to include activities not mandated by statute, but are reasonably necessary to carry out the mandate.

Chairperson Genest and Member Bryant stated that the Legislature knows what it is doing and the intent of requiring only the request of records is clear. Member Olsen added that failing to provide the records could be considered negligence on the part of the transferring school district. Member Glaab agreed that if both activities are not completed, you almost set up the very thing the statute is trying to avoid. Member Glaab also moved the staff recommendation.

The staff recommendation to approve the parameters and guidelines was adopted by a vote of 5-1 with Chairperson Genest voting no.

Item 10 *Fifteen Day Close of Voter Registration, (01-TC-15)*  
Elections Code Section 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094,  
13300,13303 and 13306;Statutes 2000, Chapter 899 (AB 1094)  
County of Orange, Claimant

Assistant Executive Director Nancy Patton presented this item. Ms. Patton explained that this program provided voters with additional days to register to vote prior to an election. Originally, staff recommended that the one-time activity of modifying the county web site to reflect the test-claim statute be included as a reimbursable activity. After comments by and discussion with the claimant and Finance, staff recommends that the proposed parameters and guidelines be revised to delete this activity.

Parties were represented as follows: Juliana Gmur for the County of Orange, Carla Castañeda and Donna Ferebee for the Department of Finance.

Ms. Castañeda reported that Finance supports the staff recommendation.

Member Olsen moved to adopt the staff recommendation. With a second by Member Bryant, the motion carried with a vote of 6-0.

## **MEETING AND HEARING CALENDARS**

### Item 11 Adoption of Revised Meeting and Hearing Calendars

This item was also presented by Ms. Patton who offered the revised meeting and hearing calendar for 2008 as well as the proposed meeting and hearing calendar for 2009.

Member Olsen made a motion to accept the revised meeting and hearing calendars. With a second by Member Glaab, the motion carried with a vote of 6-0.

## **STAFF REPORTS**

### Item 12 Chief Legal Counsel's Report (info)

Ms. Shelton reported receiving a ruling from the San Diego Superior Court on the *Emergency Procedures Act* program that upheld the Commission's decision to end reimbursement on December 31, 2004 based on the statutory changes.

Ms. Shelton introduced the Commission's new attorney, Adeniyi Adewale Ayoade, who the Commission hired before the budget hiring freeze.

Chairperson Genest noted that the court reporter is present due to an exemption from the budget contract freeze.

### Item 13 Executive Director's Report (info)

Ms. Higashi reported the status of the pending workload on test claims, new filings, amendments, reasonable reimbursement methodology and statewide estimate of costs as well as incorrect reduction claims. Most of this documentation will be reported in the Commission's September 15<sup>th</sup> annual report to the Department of Finance.

At the last meeting, Member Bryant asked, based on previous Commission regulations, how many test claims could be amended immediately before the hearing. Ms. Higashi responded 47 pending test claims.

Ms. Higashi noted a change for the November 6<sup>th</sup> agenda with the hearing of the parameters and guidelines amendments on the *Integrated Waste Management Board*, as directed by the Court.

## **PUBLIC COMMENT**

Allan Burdick representing the CSAC and League of California Cities Advisory Committee on State Mandates asked to speak during Public Comment. Mr. Burdick introduced Glen Everroad, City of Newport Beach and Co-chair of the League's Committee.

Mr. Everroad introduced Leonard Kaye and acknowledged his upcoming retirement. Mr. Kaye has represented the County of Los Angeles for over 21 years on mandate related issues.

Mr. Everroad recognized Mr. Kaye's proven successful track record and presented him with a plaque.

Mr. Kaye stated that it was an honor and a privilege to have appeared before the Commission and to argue the various cases. He also expressed appreciation for the Commission recognizing his retirement.

On behalf of the Commission, Chairperson Genest presented Mr. Kaye with a Resolution recognizing his retirement and many accomplishments.

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)**

**A. PENDING LITIGATION**

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Third District Court of Appeal, Case No. C055700; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]
3. *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833, [Peace Officer Procedural Bill of Rights]
4. *Department of Finance and California Integrated Waste Management Board v. Commission on State Mandates, Santa Monica Community College District, and Lake Tahoe Community College District*, Sacramento County Superior Court, Case No. 07CS00355, [Integrated Waste Management]
5. *San Diego Unified School District v. Commission on State Mandates and California Department of Finance*, San Diego County Superior Court, Case No. 37-2007-00064077-CU-PT-CTL, [Emergency Procedures: Earthquake Procedures and Disasters]
6. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [School Accountability Report Cards, SARC]

**B. PERSONNEL**

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Hearing no further comments, Chairperson Genest adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda. (Member Chivaro arrived during the Closed Executive Session)



## **REPORT FROM CLOSED EXECUTIVE SESSION**

At 10:35 a.m., Chairperson Genest reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda, and pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

Item 14 Proposed Revisions to Executive Director Duty Statement and Adjustment to Salary/Classification pursuant to Government Code Section 17530

Member Lujano stated that the Personnel Subcommittee met and discussed the Executive Director's salary. Member Olsen moved to approve the proposed revisions to the Executive Director's duty statement and to request that the position be set at Level D on the exempt-salary chart. This justification was due to the more complex and difficult work performed by the Executive Director. The motion also moved to authorize submission of the request to the Governor's Office and the Department of Personnel Admission subsequent to adoption of the budget.

With a second by Member Glaab, the motion was carried by a vote of 7-0.

## **PUBLIC COMMENT**

The Commission and staff discussed how hearing information will be made available and presented to the Commission members in the future. In an effort to cut costs and preserve resources, suggestions were made to implement the use of laptop computers, CD-ROMs and flash drives instead of the paper binders.

## **ADJOURNMENT**

Hearing no further business, Chairperson Genest adjourned the meeting at 10:45 a.m.

PAULA HIGASHI  
Executive Director